



King County

**Department of Development
and Environmental Services**
900 Oakesdale Avenue Southwest
Renton, WA 98055-1219

PRELIMINARY CODE INTERPRETATION L03CI002

Background

By letter dated March 25, 2003, Jeff S. Weber, on behalf of Gary and Dee Dee Schaefer requested a code interpretation of K.C.C. 21A.24.060A. Gary Schaefer has a pending application (B01M1430) for an already built construction permit for a garage. The applicant states that the garage has been constructed in the same location as a pre-existing carport. The carport and the garage are within the buffer of a Class 2 stream and within 25 feet of the top of a steep slope. The applicant states that the footprint of the garage is less than 1000 square feet larger than the carport and that the garage is no closer to the stream than the carport that it replaced. The garage is closer to the stream and slope than is the residence.

K.C.C. 21A.24.060A exempts expansions of less than 1000 square feet of single detached residences from the sensitive areas code. Expansions of other structures are not exempt and would require a variance. The question posed by Mr. Weber is whether the carport or garage, which is not attached to the existing house, is part of the single detached residence.

Discussion

K.C.C. 21A.24.060 provides for partial exemptions from the sensitive area code. The relevant provisions are:

21A.24.060 Partial exemptions. A. The following are exempt from the provisions of this chapter and any administrative rules promulgated thereunder, except for the notice on title provisions, K.C.C. 21A.24.170 - 21A.24.180, and the flood hazard area provisions, K.C.C. 21A.24.230 - 21A.24.270:

1. Structural modification of, addition to or replacement of structures, except single detached residences, in existence before November 27, 1990 which do not meet the building setback or buffer requirements for wetlands, streams or steep slope hazard areas if the modification, addition, replacement or related activity does not increase the existing footprint of the structure lying within the above-described building setback area, sensitive area or buffer;
2. Structural modification of, addition to or replacement of single detached residences in existence before November 27, 1990 which do not meet the building setback or buffer requirements for wetlands,

streams or steep slope hazard areas if the modification, addition, replacement or related activity does not increase the existing footprint of the residence lying within the above-described buffer or building setback area by more than 1000 square feet over that existing before November 27, 1990 and no portion of the modification, addition or replacement is located closer to the sensitive area or, if the existing residence is in the sensitive area, extends farther into the sensitive area; ...

Structures and single detached residences are treated differently. Structures in existence prior to November 27, 1990 that are not single detached residences, may be modified, but may not be expanded. On the other hand, if the conditions in K.C.C. 21A.24.060A.2 are satisfied, single detached residences in existence prior to the 1990 date may be expanded by up to 1000 square feet without meeting the requirements of the sensitive areas code, including the requirements for sensitive area reports and mitigation.

The zoning code does not define the term “single detached residence.” The term that comes closest is single detached dwelling unit, which is “a detached building containing one dwelling unit.” K.C.C. 21A.06.365. A dwelling unit is “one or more rooms designed for occupancy by a person or family for living and sleeping purposes” K.C.C. 21A.06.345. Also relevant to this discussion is the term residential accessory use.

21A.06.020 Accessory use, residential. Accessory use, residential:

A. A use, structure, or activity which is subordinate and incidental to a residence including, but not limited to the following uses:

1. Accessory living quarters and dwellings;
2. Fallout/bomb shelters;
3. Keeping household pets;
4. On-site rental office;
5. Pools, private docks, piers;
6. Antennae for private telecommunication services;
7. Storage of yard maintenance equipment; or
8. Storage of private vehicles, e.g. motor vehicles, boats, trailers or planes;
9. Greenhouses.

B. Some accessory uses within the scope of this section may be defined separately to enable the code to apply different conditions of approval.

Included in this list of residential accessory uses is the garaging of private vehicles. As the definition of these uses makes clear, these uses are incidental to the residential use. For example, an accessory use, such as a garage for private vehicles, could not be constructed if there were no residential use.

Structures are defined much more broadly as “anything permanently constructed in or on the ground, or over the water; excluding fences six feet or less in height, decks less than 18 inches above grade, paved areas, and structural or non-structural fill.” K.C.C. 21A.06.1255.

Although the code provisions are not entirely clear, there is nothing in the definitions that suggest that a garage or carport is encompassed in the term “single detached residence.” As a consequence, for purposes of K.C.C. 21A.24.060A, a garage or carport appears to be a “structure, other than a single detached residence.”

In support of his clients, Mr. Weber suggests that the term “detached” in the term “single detached residence” is intended to distinguish it from other types of residences, such as townhouses and apartments. He is correct in this assertion.

Mr. Weber then suggests that because accessory residential uses are recognized by the code, they are essentially inherent in the residential use. This is not a correct interpretation of the code. Accessory residential uses are optional and are not required for the primary use to be maintained. For example, accessory dwelling units are an accessory residential use but they are not required as an element of the residential use. Similarly, although the zoning code requires new residential uses to provide off-street parking, there is no requirement that parking be provided in a garage. A garage is an accessory residential use, but it is not necessary for the existence of the residential use.

Mr. Weber also suggests that allowing a garage to be expanded furthers the purposes of K.C.C. Chapter 21A.24. The purposes of K.C.C. 21A.24 is set forth in K.C.C. 21A.24. The purposes of K.C.C. Chapter 21A.24 are generally to protect the environment and include:

- B. Protecting members of the public and public resources and facilities from injury, loss of life, property damage or financial loss due to flooding, erosion, avalanche, landslides, seismic and volcanic events, soil subsidence or steep slope failures;
- C. Protecting unique, fragile and valuable elements of the environment including, but not limited to, wildlife and its habitat;
- D. Requiring mitigation of unavoidable impacts on environmentally sensitive areas by regulating alterations in or near sensitive areas;
- E. Preventing cumulative adverse environmental impacts on water availability, water quality, ground water, wetlands and streams.

K.C.C. 21A.24.010.

The expressed purposes for addressing cumulative impacts and for requiring mitigation for unavoidable impacts both suggest that exceptions should be read narrowly. K.C.C. 21A.24.060A exempts activities covered by that section from all sensitive area requirements, except for the requirements for notice on title and flood protection.

Mr. Weber also suggests that expansions of residential structures are likely to cause less harm to the environment than expansion of other kinds of structures. The potential for harm to the environment depends on the nature of the structure and the activity as well as where the structure is located. Residential uses do have the potential for adverse impacts to sensitive areas.

In this particular facts of this case, the carport and the garage that replaced it are closer to the stream than the residence. If the property owner had added the garage to the residential structure, that would have resulted in less environmental impact than an expansion of the carport.

Decision

For purposes of K.C.C. 21A.24.060A, a residential accessory use, such as a garage or carport, is not automatically considered to be part of a single detached residence. In a case, as here, where there is no structure connecting the carport or garage and the residence, the carport or garage falls under the provisions of K.C.C. 21A.24.060A.1. As such, it is only exempt from K.C.C. Chapter 21A.24 for modifications, alterations, or replacement that do not expand the footprint. A separate question, not presented here, is whether a garage or carport that is connected to a residence by a structure qualifies under K.C.C. 21A.24.060A.2. This interpretation does not answer that question.

Appeal of Preliminary and Final Code Interpretations

This code interpretation relates to building permit application B01M1430. Under the provisions of K.C.C. 2.100.040, this code interpretation is preliminary. A final code interpretation will be issued at the time DDES makes its final decision on building permit application B01M1430.

Under K.C.C. 2.100.050, once a final code interpretation is issued, it is generally not subject to administrative appeal. However, if a code interpretation relates to a development application, the code interpretation is subject to the same administrative appeal provisions that apply to the development permit application.

For purposes of appealing this code interpretation, the approval or denial of the building permit application constitutes the final agency decision. As a note, K.C.C. 2.100.040H requires the department to mail a copy of the final code interpretation to the person requesting the interpretation, to the applicant for a permit to which the interpretation is related, and to parties of record on the underlying permit.

_____/s/ Stephanie Warden
Stephanie Warden
Director
Development and Environmental Services

May 16, 2003
Date